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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,098	10/17/2003	David T. Zwolinski	85939.000298	9084
23387	7590	11/25/2005	EXAMINER	
Stephen B. Salai, Esq. Harter, Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,098

Applicant(s)

ZWOLINSKI ET AL.

Examiner

Gregory J. Strimbu

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 32-90 is/are pending in the application.
- 4a) Of the above claim(s) 32-39 and 51-90 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 40-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Election/Restrictions

Applicant's election of Group I in the reply filed on November 12, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Accordingly, claims 32-39 and 51-90 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 12, 2004.

Drawings

The corrected drawings filed on November 12, 2004 have been approved.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-9, 13-18, 20-30, 40, 44; and 46-50 are rejected under 35 U.S.C. 102(b) as being anticipated by McManus. McManus discloses vehicular weatherseal comprising a rigid polymeric backbone (not specifically numbered, but shown in figure 1) having a flange engaging channel 15 and window receiving channel 12, the window receiving channel being inverted relative to the flange engaging channel

Art Unit: 3634

and defined by a substantially curvilinear cross section since at least a portion of the window receiving channel is curved, the window receiving channel includes a window channel closed end (not numbered, but shown in figure 1) having a varying radius of curvature as shown at the right and left hand "corners" of the window receiving channel, the window channel closed end wall is defined by a constant wall thickness since at least portion of the window channel closed end wall has a constant thickness, the window channel closed end has a constant radius of curvature since at least a portion of the right hand "corner" of the window channel closed end has a constant radius of curvature, a flange engaging channel defined by a transition leg 18, an interior leg 16 and a flange channel closed end (not numbered, but shown connecting the transition and interior legs), the flange channel closed end is curvilinear since the exterior surface of the flange channel closed end is curvilinear, the flange channel closed end has a varying radius of curvature since the inner surface of the flange channel closed end has a smaller radius than the outer surface of the flange channel closed end, the flange channel closed end has a constant thickness since the left hand side of the flange channel closed end has a constant thickness, the flange channel closed end has a constant radius of curvature since the exterior surface of the flange channel closed end has a constant radius of curvature, a sealing lip 54, a linear segment 18 having an inflection point, a trim lip 26, the backbone has a hardness of at least 40 Shore D (see column 5, lines 45-49), the backbone is monolithic, a window channel exterior leg 38 and a transition leg 18, and two attachment tabs 22 and 24.

Art Unit: 3634

It should be noted that each of the flange engaging channel and the window receiving channel have no set definitions in the art. Therefore, each of the flange engaging channel and the window receiving channel can comprise all to only a portion of the channels 14 and 16, respectively, and as shown in figure 1.

With respect to claim 7, the linear segment can be any portion of the segment joining the flange engaging channel and the window receiving channel.

Since claim 49 recites no more than process steps, it has been treated as a process by product claim and is therefore anticipated by the product as set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over McManus as applied to claims 1, 5-9, 13-18, 20-30, 40, 44, and 46-50 above. McManus is silent concerning an inner radius of curvature to thickness ratio for the window channel closed end.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of

Art Unit: 3634

ordinary skill to provide the window channel closed end with an inner radius of curvature to thickness ratio greater than approximately 1 but less than approximately 2.5 to ensure the sealing lips properly seal against the windowpane.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McManus as applied to claims 1, 5-9, 13-18, 20-30, 40, 44, and 46-50 above.

McManus is silent concerning the particular inner radius of curvature to thickness ratio for the flange channel closed end.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide the flange channel closed end with a radius of curvature to thickness ratio of approximately 1 but less than approximately 2.5 to ensure the sealing lips properly seal against the windowpane.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over McManus as applied to claims 1, 5-9, 13-18, 20-30, 40, 44, and 46-50 above, and further in view of Keeney et al. Keeney et al. disclose a weatherseal comprising an elongation reducing member 72.

Art Unit: 3634

It would have been obvious to one of ordinary skill in the art to provide McManus with an elongation reducing member, as taught by Keeney et al., to increase the strength of the weatherseal.

Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over McManus as applied to claims 1, 5-9, 13-18, 20-30, 40, 44, and 46-50 above, and further in view of European Patent Application No. 0 367 731. European Patent Application No. 0 367 731 discloses a window receiving channel including a substantially curvilinear closed end (not numbered, but shown in figure 2).

It would have been obvious to one of ordinary skill in the art to provide McManus with a substantially curvilinear closed end, as taught by European Patent Application No. 0 367 731, to increase the amount of space available to receive the window pane.

Claims 1, 6, 8, 9, 14, 15, 21, 24-26, 30 and 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer in view of McManus. Mayer discloses a vehicular weatherseal comprising a rigid backbone 13 having a flange engaging channel (not numbered, but shown in figure 2) and window receiving channel (not numbered, but shown in figure 2) the window receiving channel being inverted relative to the flange engaging channel and defined by a substantially curvilinear cross section. Mayer is silent concerning a polymeric construction.

However, McManus discloses a weatherseal comprising TPE.

It would have been obvious to one of ordinary skill in the art to provide Mayer with a polymeric construction, as taught by McManus, to increase the weather resistance of the seal.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer in view of McManus as applied to claims 1, 6, 8, 9, 14, 15, 21, 24-26, 30 and 41-45 above. Mayer, as modified above, is silent concerning an inner radius of curvature to thickness ratio for the window channel closed end.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide the window channel closed end with an inner radius of curvature to thickness ratio greater than approximately 1 but less than approximately 2.5 to ensure the sealing lips properly seal against the windowpane.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer in view of McManus as applied to claims 1, 6, 8, 9, 14, 15, 21, 24-26, 30 and 41-45 above. Mayer, as modified above, is silent concerning the particular inner radius of curvature to thickness ratio for the flange channel closed end.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use.

Art Unit: 3634

Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide the flange channel closed end with a radius of curvature to thickness ratio of approximately 1 but less than approximately 2.5 to ensure the sealing lips properly seal against the windowpane.

Response to Arguments

Applicant's arguments filed September 19, 2005 have been fully considered but they are moot in view of the new grounds of rejection.

Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a stylized flourish at the end.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
November 18, 2005